No. 02-0417 (4)

Supreme Court U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

DONAN B. MCAULEY,

PETITIONER

V.

DORIS KENNAY OR D/B/A AS IN TOTIDEM VERBIS, AND SUPREME COURT OF ILLINOIS

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

REPLY BRIEF OF PETITIONER

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159 Ill. 2d 469, 486, 639 N.E.2d 1282 (1994)

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668 N.E.2d 1023 (1996).

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683 N.E.2d 492 (1997).

Van Horne v. Muller, 185 Ill. 2d 299, 305, 705 1
N.E.2d 898 (1998).

ARGUMENT

Kennay claim of state court "fact" determination is error, state court de novo decision is one of law.

Respondent DORIS J. KENNAY (hereafter "Kennay") without citation to authority which should be sufficient in itself to disregard her argument nevertheless presents a faulty proposition in her Brief in Opposition to Petition for Writ of Certiorari that the state court(s) "as matter of fact" denied Petitioner DONAN B. McAULEY's (hereafter "McAuley") counterclaim upon which sanctions were imposed for appealing the dismissal of the counterclaim. As set forth in Petitioner's App. p. 19 the trial court did not set forth upon which statute the federal truth-in-lending counterclaim was dismissed and the Third District Appellate Court also did not, Petitioner's App. p. 7.

Since Kennay's motion for dismissal of the counterclaim was not supported by affidavit or specificity her motion fell within the area of confluence between 735 ILCS 5/2-615 and 735 ILCS 5/2-619, *Illinois Graphics* Co. *v. Nickum, 159 Ill. 2d 469, 486, 639 N.E.2d 1282 (1994),* and the appropriate method for reaching the claimed defect is a section 2-615 motion (735 ILCS 5/2-615). *Rowan v. Novotny, 157 Ill. App. 3d 691, 693-94, 510 N.E.2d 1111 (1987).* A 2-615 motion attacks the legal sufficiency of the complaint by alleging defects on the face of the complaint. *Van Horne v. Muller, 185 Ill. 2d 299, 305, 705 N.E.2d 898 (1998).* Thus, a reviewing court is only concerned with a question of law as presented by the pleadings, in this case a counterclaim.

Because the resolution of the motion involves only a question of law, review is de novo. *Stephen L. Winternitz, Inc. v. National Bank of Monmouth, 289 Ill. App. 3d 753, 755, 683 N.E.2d 492 (1997).*

Moreover, since the court(s) had ruled after denying McAuley discovery, App. p. 19, and information was within Kennay's knowledge and control, it was error for the state court to require precision pleading, *Bryson v. News America Publications, 174 Ill.2d 77, 110, 672 N.E.2d 1207 (1996),* and McAuley's counterclaim, App. p. 13-14, set forth a plain and concise statement sufficient as a cause of action. *Rodgers v. Whitley, 282 Ill. App. 3d 741, 749, 668 N.E.2d 1023 (1996).*

The position of Kennay that there is presented to this Court only a fact determination by the lower courts is patently baseless. Moreover, this Court should not give credence to Kennay's argument made without citation of authority when as shown above the authority that exists is directly contrary.

Respectfully submitted,

/s/ Donan B. McAuley

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Certificate of Service

The undersigned certifies he mailed, postage prepaid, on October _____, 2002, 40 copies of his Reply Brief to United States Supreme Court, Attn Clerk of Court, Supreme Court Building, Washington DC 20543; three copies to Mr. James Mertes, Attorney, 102 E. Route 30, Rock Falls Il 61071 and copy to Supreme Court of Illinois, Attn Clerk of Court, Supreme Court Building, Springfield, IL 62706.

/s/ Donan B. McAuley

Donan B. McAuley